

Chapter 12.1

CABLE TELEVISION

Sec. 12.1-1. Purpose and definitions.

The council of the City of Lynchburg, having determined that it is in the best interest of and consistent with the convenience and necessity of the City of Lynchburg to grant franchises to companies desiring to provide cable services within the confines of the city and on the terms and conditions hereinafter set forth, and as may be further described in each franchise agreement, has identified the purpose of this ordinance to be as follows:

- (a) To provide a procedure for the granting of nonexclusive franchises for providing cable services in the city; and
- (b) To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of cable systems in, upon, along, across, above, over or under or in any manner connected with the streets, public ways or public places within the jurisdiction of the city as now or in the future may exist; and
- (c) To provide for the payment of certain franchise fees and other valuable consideration to the city which, among other purposes, may be used to pay for the use of public right-of-ways and to regulate the construction and operation, use and development of such a system within the city; and
- (d) To provide conditions under which such franchised system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, the citizens and general public of the city; and
- (e) To provide remedies and prescribe penalties and liquidated damages for any violation of this ordinance and the terms and conditions of franchises granted pursuant thereto.

Definitions:

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) Access channel shall mean a single channel dedicated in whole or in part for local programming which is not originated by a cable company.
- (b) Basic service shall mean any service tier which includes the retransmission of local television broadcast signals, and public, educational and governmental access channels.
- (c) Cable services are defined as the one-way transmission to subscribers of video programming and other programming services together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the cable operator makes available to all subscribers generally. Examples of cable services include: video programming, pay-per-view, voter preference polls in the context of a video program, teletexts, one-way transmission of any computer software and one-way videotex services such as news services, stock market information, etc. Noncable services would include: shop-at-home, bank-at-home services, electronic mail, one-way and two-way transmission of nonvideo data

and information not offered to all subscribers, data processing, video conferencing and voice communication.

(d) Cablecasting is programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

(e) Cable system shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(2) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) any facilities of any electric utility used solely for operating its electric utility systems.

(f) City or grantor shall mean the City of Lynchburg, Virginia, a municipal corporation in the Commonwealth of Virginia in its present incorporated form or as it may be changed by annexation, reorganized, consolidated or reincorporated.

(g) Construction. The terms completion of construction, complete system construction, satisfactorily complete and fully activate shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed and all bonding and grounding has been completed; that all necessary connectors, splitters and taps have been installed; that construction of the headends or hubs have been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable service to subscribers has been completed. Proof of performance tests shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire system will be activated and proofed when completed. Construction of any segment or of the entire system will not be considered complete until proof of performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) and any problems found during testing have been corrected. The term completion of construction does not include marketing and installation of subscriber service.

(h) Council shall mean the governing body of the City of Lynchburg.

(i) Dedicate shall mean to make available channel space or equipment for exclusive use of the designated user, subject to the authority of the city council to authorize reassignments of channels.

(j) Grantee or company is a party or parties to which a franchise under this chapter is granted by the council and its or their lawful successors and assigns.

(k) Gross revenues shall mean all cash, credits, property of any kind or nature or other consideration received directly or indirectly by a grantee, its affiliates, subsidiaries, parent and any person in which grantee has a financial interest, or from any source whatsoever, arising from or attributable to the sale or exchange of cable services by grantee within the city or in any way derived from the operation of its system, including, but not limited to, basic service monthly fees, pay TV, pay-per-view, leased channel fees,

converter rentals or sales, studio rental and advertising revenues. These gross revenues shall not be reduced for any purposes other than provided herein, and shall be the basis for computing the fee imposed pursuant to Section 12.1-16. These gross revenues shall not include revenues from a grantee's independent production company, or retail store, converter deposits, refunds to subscribers by the grantee or subscriber accounts which are in arrears and are deemed uncollectable by grantee.

(l) Initial activation of service or initially providing cable service shall mean with respect to a particular segment, group of segments or the entire cable system, as the case may be, that all proposed services and system capabilities as stated in the proposal are available and/or in place, construction has been completed (see definition of construction) and the completed segment or segments in question or the entire cable system, as the case may be, has been activated.

(m) Local origination programming shall mean programming locally produced by the company.

(n) Proposal or application refers to a formal response by a qualified cable company to a specific invitation by the city asking for proposals in accordance with city specifications to provide cable services to residents, businesses, industries and institutions within the city.

(o) Subscriber is a recipient of basic cable service.

(p) Street shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing as such within the city.

(q) Two-way communications means the transmission of telecommunications signals from subscriber locations or other points throughout the system back to the system's control center as well as transmission of signals from the control center to subscriber locations.

(r) User means a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

(s) The terms will be available, will be equipped, will use, will be designed, will perform, will be utilized, will permit, allow, will be activated, will be initially connected, will be capable, will provide, will include, will employ, will be established, will be able, will be implemented, will be delivered, will utilize, and other similar uses of terms in a company's proposal denoting the activation of cable service or the delivery of equipment, facilities or services shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of service (as defined in this section) unless otherwise expressly and clearly stated or qualified in the company's proposal to mean a more specific or different time. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-2. Applications for franchise.

(a) Content. Each application for a new franchise to construct, operate or maintain any cable system in this city shall be filed with the clerk of council to include, but not be limited to, the following information:

(1) the name, address and telephone number of the applicant;

(2) a detailed statement of the corporate or business entity organization of the applicant including, but not limited to, the following and to whatever extent required by the city:

a. the names, residence and business addresses of all officers, directors and associates of the applicant;

b. the names, residence and business addresses of all officers, persons and entities having any share of the ownership of the applicant and the respective ownership share of each such person or entity;

c. the names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity including,

but not limited to, cable systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby;

d. a detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields;

e. a detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the city council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the city, or a statement from an independent certified public accountant certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in this city;

f. a detailed financial plan (pro forma) describing for each year of the franchise projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements and a sources and uses of funds statement. All information is to be presented in the format required by the city, and

g. a statement identifying, by place and date, any other cable system franchises awarded to the applicant, its parent or subsidiary; the status of said franchises with respect to completion thereof; the total cost of completion of such franchised systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.

(3) a detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

a. a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;

b. a statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges;

c. a detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant;

d. a copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber, and

e. a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise.

(4) A copy of any agreement covering the franchise area, if existing between the applicant and any municipal utility or public utility subject to regulation by the Virginia State Corporation Commission providing for the use of any facilities of the public utility including, but not limited to, poles, lines or conduits.

(5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any other provision of law. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-3. Application fees.

(a) Amount. Notwithstanding any other requirement of this chapter, each applicant must furnish with its proposal a nonrefundable filing fee in the amount of five thousand dollars (\$5,000.00) by certified or cashier's check made payable to the City of Lynchburg. No proposal for a franchise shall be considered without receipt of said check.

(b) Deposit and use. All checks received will be deposited to an account of the city and will serve to recover all expenses incurred by the city in the preparation and granting of a franchise, the execution of a franchise and regulation of franchise pursuant to this chapter. Said expenses shall include, but not be limited to, any and all administrative, engineering, publication, legal costs and consultant's expenses incurred in connection with the processing, evaluation and preparation of documents relating to the franchise.

(c) Additional fee. In the event that expenses exceed the total amount of filing fees collected from the applicants, an applicant awarded a franchise shall pay to the city the excess amount not to exceed thirty thousand dollars (\$30,000.00) within sixty (60) days of demand by the city. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1.4. Selection of grantee.

(a) Solicitation of proposals. The council may, by advertisement or any other means, solicit and call for applications for cable system franchises and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications. The terms and conditions for application shall be described in a document called request for proposals.

(b) Compliance with city requirement. Any person submitting a proposal for a cable system in response to the city's request for proposals shall provide all information required by this chapter and all other information requested by the city's request for proposals or otherwise required by the city and the Commonwealth of Virginia. Each proposal shall be responsive to the questions soliciting the information and shall completely, accurately and materially supply all of the information so solicited. Any misrepresentation, failure, neglect or refusal to provide any of such information may, at the option of the city, render a proposal invalid. The requested information must be complete and verified as true by the applicant.

(c) Property of city. All proposals received by the city from an applicant shall become the sole property of the city.

(d) Applicant responsibility. Before submitting a proposal, each applicant shall be solely responsible for and must:

(1) examine Chapter 12.1 and the request for proposals documents thoroughly;

(2) be familiar with local conditions that may in any manner affect performance under the franchise including, but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographics, pole attachment policies of appropriate utility authorities, undergrounding and subscriber desires;

(3) be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and

(4) carefully correlate all observations with the requirements of this chapter and the request for proposals documents.

(e) Referral to city manager. Upon receipt of any application for franchise, the council shall refer the same to the city manager who shall prepare or cause to be prepared a report, including recommendations

respecting such application, and cause the same to be completed and filed with the council. The city will evaluate all proposals that have complied with its requirements. All applicants that have met the city's qualifications in the request for proposals and have submitted proposals on the required forms will be offered the opportunity to make a formal presentation to the council in support of their applications.

(f) Investigations. The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the city all such information and data for this purpose as the city may request. The city reserves the right to reject any proposal if the evidence submitted by, or investigation of, such applicant fails to satisfy the city that such applicant is properly qualified to carry out the obligations of the franchise agreement, comply with the provisions of this chapter or to satisfactorily construct and operate the system. Proposals that modify or place conditions upon requirements stated in the city's request for proposals may be rejected by the city.

(g) Rejection. The city may reject any and all applications from whatever source and whenever received and the city also reserves the right to waive all formalities where the best interest of the city may be served, and may, if it so desires, request new or additional proposals.

(h) Public comment. If, upon receiving the city manager's report, the council shall determine to further consider the applications, it shall set a public hearing for the consideration of applications; fixing and setting forth a day, hour and place when and where any persons having any interest therein or objections may file written comments and appear before the council and be heard.

(i) Consideration. In making any determination hereunder as to any application for a new franchise, the council may consider factors including, but not limited to, the quality of the service proposed, rates to subscriber, income to the city, experience, character, background and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this chapter, and to abide by all purpose and policy considerations, franchise limitations and requirements, and any other considerations deemed pertinent by the council for safeguarding the interests of the city and the public.

(j) Determination. At the time set for the hearing, or at any adjournment thereof, the council shall proceed to hear all comments. Thereafter, the council shall make one (1) of the following determinations:

- (1) that such application be denied, which determination shall be final and conclusive; or
- (2) that such franchise be granted and the terms of conditions thereof.

No provision of this chapter shall be deemed or construed so as to require the granting of a franchise when, in the opinion of the council, it is in the public interest to restrict the number of grantees to one (1) or more.

(k) Additional information. The council may at any time demand and applicants shall provide such supplementary, additional or other information as the council may deem reasonably necessary to determine whether the requested franchise should be granted.

(l) Awards based on merit. It is the intention of the city to award any cable franchise on the basis of merit of proposals. To this end any communications with the city council by those wishing to submit proposals for a cable franchise should be limited to public sessions. Requests for information should be directed to the office of the city manager. Proposals will not be evaluated on the basis of ownership by individuals, institutions and community agencies in corporations submitting cable franchise proposals.

(m) Council decisions final. Any decision of the city council concerning selection of a franchisee pursuant to this chapter shall be final. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-5. Grant of authority.

(a) Successful applicants chosen by the city council will, subject to Section 12.1-11, be granted the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City of Lynchburg wires, cables, underground conduits, manholes and other cable conductors and fixtures necessary for the maintenance and operation within the city of a cable system to be used for the sale and distribution of cable services to the residents of the city.

(b) Any privilege claimed under any such franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

(c) Insofar as it is not inconsistent with or otherwise preempted by federal or commonwealth regulations, the city council also grants the right and privilege to successful grantees to provide noncable communications services. The city council retains all authority, not otherwise preempted, to regulate noncable communications services to the extent necessary to assure the delivery of proposed noncable services, if any, and that they are in compliance with all regulatory provisions of this chapter. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-6. Duration of franchise; renewal.

(a) The duration of the rights, privileges and authorizations granted in a franchise agreement shall not exceed fifteen (15) years from the date a franchise is awarded. A franchise may be renewed by the city upon application of the grantee pursuant to the procedure established in subsection (b) of this section and in accordance with the then applicable law.

(b) Renewal:

(1) During the six (6) month period which begins with the thirty-sixth (36th) month before the franchise expiration, the city may on its own initiative and shall at the request of the grantee commence proceedings which afford the public appropriate notice and participation for the purpose of:

- a. identifying the future cable-related community needs and interests; and
- b. reviewing the performance of the grantee under the franchise during the then current franchise term.

(2) a. Upon completion of a proceeding under subsection (1) of this section, the grantee seeking renewal of a franchise may, on its own initiative or at the request of the city, submit a proposal for renewal.

b. Any such proposal shall contain such material as the city may require, including proposals for an upgrade of the cable system.

c. The city may establish a date by which such proposal shall be submitted.

(3) a. Upon submittal by the grantee of a proposal to the city for the renewal of the franchise, the city shall provide public notice of such proposal and, during the four (4) month period which begins on the completion of any proceedings under subsection (1) of this section, renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of the grantee or on its own initiative, the city manager shall select a hearing officer who shall commence an administrative proceeding after providing prompt public notice of such proceeding, in accordance with paragraph (3)b. of this section to consider whether:

1. the grantee has substantially complied with the material terms of the existing franchise and with applicable law;
2. the quality of the grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs;

3. the grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the grantee's proposal; and

4. the grantee's proposal is reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests.

b. In any proceeding under paragraph (3)a. of this section, the grantee shall be afforded notice and the grantee and the city, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence [including evidence related to issues raised in the proceeding under subsection (1) of this section], to require the production of evidence and to question witnesses. A record shall be made of any such proceeding.

c. The administrative hearing officer will make the findings of fact required by 47 U.S.C. Section 546(c)(1) and subsections 12.1-6(b)(3)a. and b. of this section within sixty (60) days of said proceeding and promptly submit these findings to the clerk of council.

d. Upon receipt of the findings of fact the city council shall issue a written decision granting or denying the proposal for renewal based upon said findings of fact, and transmit a copy of such decision to the grantee. Such decision shall state the reasons therefor.

(4) Any denial of a proposal for renewal shall be based on one (1) or more adverse findings made with respect to the factors described in subparagraphs 1. through 4. of subsection (3)a. of this section, pursuant to the record of the proceeding under subsection (3) of this section. The city may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (3)a.1. of this section or on events considered under subsection (3)a.2. of this section in any case in which a violation of the franchise or the events considered under subsection (3)a.2. of this section occur after the effective date of the Cable Communications Policy Act of 1984 (December 29, 1984), unless the city has provided the grantee with notice and the opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or has effectively acquiesced.

(5) If the grantee's proposal for renewal has been denied by a final decision of the city made pursuant to this section, or has been adversely affected by a failure of the city to act in accordance with the procedural requirements of this section, the grantee may appeal such final decision or failure pursuant to the provisions of 47 U.S.C. Section 546(e).

(6) Notwithstanding the provisions of subsections (1) through (5) of this section, the grantee may submit a proposal for the renewal of the franchise pursuant to this subsection at any time, and the city may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (1) through (5) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (1) through (5).

(7) The grantee shall pay all reasonable costs incurred by the city considering and processing a proposal for renewal as described in subsections (1), (3)a., (3)c. and (6) of this section. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-7. Franchise territory.

A franchise is for the present territorial limits of the City of Lynchburg and for any area henceforth added thereto during the franchise term. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-8. Service availability and record request.

The grantee shall provide cable services throughout the entire franchise area pursuant to the provisions of this ordinance and franchise agreement and shall keep a current file of all requests for service received by the grantee for the most recent year. This record shall be maintained during the entire life of the

franchise and be available for public inspection at the local office of the grantee during regular office hours. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-9. CATV system construction.

(a) Construction map and schedule.

(1) Map and plan. The grantee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the franchise agreement. The plan shall include system design details, equipment specifications and design performance criteria. The plan shall also include a map of the entire franchise area and shall clearly delineate the following:

a. the areas within the franchise area where the cable system will be initially available to subscribers including a schedule of construction for each year that construction or reconstruction is proposed, and

b. the areas within the franchise area where extension of the cable system cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

(2) Early construction and extension. Nothing in this section shall prevent the grantee from constructing or reconstructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan report timetable shall require application to and consent by the council.

(3) Delay in construction timetable. Any delay beyond the terms of construction or reconstruction timetable, unless approved by the council, will be considered a violation of this chapter for which the provisions of either Sections 12.1-29 or 12.1-31 shall apply, as determined by the council.

(4) Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by the grantee shall commence as soon after the grant and acceptance of a franchise as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise. Failure to proceed expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of a franchise.

(5) Additional mandatory extension. Extension of the system into any areas not specifically treated in the plan shall nonetheless be required if the terms of any of the following conditions are met:

a. Mandatory extension rule. The grantee shall extend system upon request to any contiguous area not designated for initial service in the plan when potential subscribers can be served by extension of system past dwelling units equivalent to a density of thirty-five (35) homes per street mile for aerial cable or fifty (50) homes per street mile for underground cable. Extension hereunder shall be at the grantee's cost. If undergrounding is required by regulation, the grantee must make installation at the grantee's expense. Where aerial extension is allowed by regulation but underground installation is requested by benefited subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited subscribers.

b. Early extension. In areas not meeting the requirements for mandatory extension of service, the grantee shall provide, upon the request of five (5) or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. The grantee shall then extend service upon request of said potential subscribers according to the rate schedule. The grantee may require advance payment or assurance of payment satisfactory to the grantee. The amount paid by subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

c. New development undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer/property owner shall give the grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available

for the grantee's installation of conduit and/or cable. The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer/property owner; except that if the grantee fails to install its conduit and/or cable within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the grantee. Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plat request.

d. Special agreements. Nothing herein shall be construed to prevent the grantee from serving areas not covered under this section upon agreement with developers, property owners or residents.

(6) Aerial drops exceeding one hundred fifty (150) feet. With respect to requests for connection requiring an aerial drop line in excess of one hundred fifty (150) feet, the grantee must extend and make available cable television service to such residents at a connection fee not to exceed the actual installation costs incurred by the grantee for the distance exceeding one hundred fifty (150) feet.

(7) Underground drops exceeding one hundred fifty (150) feet. All areas required to be underground construction shall require all underground drop installations of not more than one hundred fifty (150) feet at the cost of the grantee. Connections in excess of one hundred fifty (150) feet shall be at the expense of a subscriber at the grantee's actual cost. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-10. Location of property of grantee.

(a) Any wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the director of public works acting in the exercise of his reasonable discretion.

(b) The grantee shall not install any facilities or apparatus in or on other public property, places, easements, or rights-of-way or within any privately-owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city except those installed in or on public utility facilities now existing without obtaining the prior written approval of the director of public works.

(c) The grantee shall construct, operate and maintain all of its transmission and distribution facilities, other than active or passive devices, underground in any geographical area in which all utility lines in that geographical area are underground. In the event any overhead facilities of the grantee are included in a district or area where the undergrounding of overhead utility facilities is being done, the grantee shall place its facilities underground concurrently and in accordance with the schedule for such district or area.

(d) The grantee shall file plans, specifications and plat maps of the entire system showing materials of construction and horizontal and vertical locations with respect to property lines and grade lines in the office of the director of public works prior to the issuance of a permit for construction or reconstruction. Prior to requesting the issuance of a permit for the installation or modification of any facility or apparatus in accordance with the provisions of this section, the grantee shall file such plans and plat maps with all utility companies and public agencies whose facilities are affected by such installation and obtain a statement signed by a responsible official thereof that such utility or public agency has no objection to the proposed location of such facility. Such utility companies and public agencies shall act upon a request made to them by a grantee in accordance with the foregoing provisions within thirty (30) days after such request has been made to such utility or public agency.

(e) The grantee will comply with the provisions of Chapter 10.3 of Title 56 of the Code of Virginia which provides for location of general utility services.

(f) The grantee shall coordinate its installation of underground equipment and apparatus simultaneously with telephone and electric conduit whenever the same are installed within the grantee's area.

(g) In order that the provisions of subsections (c) and (f) of this section may be reasonably applied in instances where extreme or unnecessary hardship would result from carrying out the provisions of this section, the council shall have the power to vary the mandatory provisions of this section in any specific case in such a manner that substantial justice is done upon a showing by the grantee of good cause therefor. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-11. Use of poles, towers and conduits.

(a) For the purpose of constructing, installing, operating and maintaining the wires, cables, appliances, fixtures and appurtenances necessary to the community antenna television system, the grantee shall be required to use the poles, towers or conduits of others, except as further provided in the next succeeding paragraph. Others are defined as those public utilities, such as the electric utility and telephone utility which have municipal authority or franchise grant to construct, install and maintain poles, towers or conduits within the city.

For the purpose of this section, the grantee shall obtain from each of the utilities having franchise within the city an agreement whereby the grantee may use the poles, towers or conduits of the utility for the purposes of the grantee, except that the grantee shall have the right to construct its own conduits when same shall assist the community antenna television system and shall not adversely affect the existing utility conduits and unduly damage the rights-of-way and other public places and property of the city. The terms and conditions of such agreements shall be a matter of determination between the grantee and the utility, except that in no wise shall an agreement entitle the grantee beyond the terms and conditions of its franchise, nor shall it entitle a utility beyond the terms and conditions of its franchise from the city, nor shall it entitle the utility to favor the grantee beyond the terms and conditions of its franchise.

The grantee shall file with the city manager an executed copy of each of the agreements entered into between the grantee and utility, afore defined. Any amendment or revision to an agreement shall be similarly filed. In the event of expiration or cancellation of any agreement, the grantee shall, within sixty (60) days after the date of such expiration or cancellation, obtain and enter into a new agreement with the particular utility. In the event any utility shall discontinue its utility operations by franchise forfeiture, termination or otherwise and shall not continue operation then the grantee hereunder shall within sixty (60) days after franchise grant to any new utility, obtain an agreement as prescribed in this section from the new utility.

As cited herein, it is intended that such agreement shall be with each utility as defined above to the exclusion of none. Where the grantee desires to extend its cables or lines and poles or conduits of one (1) or more utilities are not available, the grantee shall call upon a utility for such pole or conduit construction. The purpose of the requirement hereunder that there be in effect at all times by the grantee a current attachment agreement with each utility is in order that the grantee may function under the conditions of pole and conduit interchange of use arrangements as exist between the utilities within the city.

(b) The grantee shall be bound by any rule, restrictive covenant or other regulations of any subdivision, residential area or restricted area, or by any ordinance of the city whether now or hereafter enacted, requiring utility lines to be placed underground. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-12. Construction and technical standards.

(a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances and construction standards of the City of Lynchburg, the NCTA Recommended Practices for Measurements on Cable Television Systems (published by the National Cable Television Association) and detailed standards submitted by the grantee as part of its application, which standards are to be incorporated by reference in the franchise agreement.

In addition, the grantee shall provide the city, upon request, a written report of the results of the grantee's annual proof of performance tests. The grantee shall pay the costs incurred by the city for any technical assistance deemed necessary by the city for obtaining independent verification of technical compliance with all standards.

(b) Additional specifications. Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with applicable codes.

The grantee shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two (2) hours.

The grantee shall at all times comply with the:

- (1) National Electrical Safety Code (National Bureau of Standards);
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) Bell System Code of Pole Line Construction; and
- (4) NCTA Recommended Practices for Measurements on Cable Television Systems (National Cable Television Association).

In any event the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-13. Use of streets.

(a) General control and location of lines. The grantee, in any opening it shall make in the streets in the city, shall be in compliance with the provisions of Chapter 10.3 of Title 56 of the Code of Virginia which provides for location of general utility services and be subject to the provisions of the franchise and to all applicable ordinances and other regulations. All poles erected by others in behalf of the grantee shall be neat and symmetrical and shall be so located as to in no way interfere with the safety or convenience of persons traveling on or over the streets and public places. The city reserves the right by resolution or otherwise to further or specifically designate the locations of any poles, towers, lines, cable or conduit, with reference to public utility lines or conduit facilities such as sewer, water, electric, telephone and gas in such a manner as to promote the public safety and to protect public property. Failure by the city to so designate shall not relieve the grantee of responsibility in matters of public safety. Such poles, lines or conduit as may be constructed or located shall be constructed or located as not to interfere with the construction, location and maintenance of lines of municipal utilities or duly franchised or established public service corporations. Any designation of location required or authorized herein shall be accomplished by the city so as not to unnecessarily delay the grantee in any of its operations. The city hereby reserves the right at all times to reject any proposed installation by or in behalf of the grantee whose manner or place of construction the city deems contrary to the provisions of this franchise or to public interest, and may order and direct the grantee or its agent, at its own expense, to move the location or alter the construction of any existing installation wherever the city council deems the public interest to require such removal or alteration, having due regard to the equities of the parties concerned and the purpose of this franchise.

(b) Disturbance of streets—Restoration.

(1) Written permits, upon payment of applicable fee, shall be obtained by the grantee from the director of public works before and whenever it becomes necessary for the grantee to excavate in the streets of the city in order to install, construct, extend or repair any of the antenna television lines or service therein or thereon. Such permits may be applicable to any or all types of excavations. Such permits, further, shall

state the particular part or point of the streets where said construction or excavation is to be made and the length of time in which such permit shall authorize such work to be done. Exception to the requirement for permit shall be permitted in cases of emergencies involving public safety.

(2) Immediately after lines or services are installed or repaired by the grantee to this ordinance, the incidental trenches or excavations shall be refilled by the grantee in a manner acceptable to the director of public works. Pavement, sidewalks, curbs, gutters or other portions of streets or public places destroyed, disturbed or damaged by such work shall be promptly restored and replaced with like materials to their former condition by the grantee at its own expense; however, where it is necessary, and if permitted, during construction or installation, then the grantee at its own expense shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk paving, rather than replacing only the area actually cut, the grantee shall replace the full width of the existing walk and full length of the section or sections cut, a section being determined as that area marked by expansion joints or scoring. The grantee shall maintain, repair and keep in good condition, for a period of one (1) year following such disturbance, all portions of streets disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by the grantee. The grantee shall in any street promptly remove or correct any obstruction or defect which may be caused by the grantee or its agents in the operation or maintenance of the grantee's properties. Any such obstruction or defect which is not promptly removed, repaired or corrected by the grantee, after proper notice to the grantee directing removal or repair as the case may be, may be removed or corrected by the city and the costs thereof shall be charged against the grantee and may be enforced as a lien upon any of its properties or assets. Expense of damage, relocation or replacement to utility lines, sanitary sewers, storm sewers and storm drains, where such expense results from construction, installation or maintenance of the grantee's lines or facilities, shall be borne by the grantee and any expense incurred in connection thereto by the city shall be reimbursed by the grantee.

(3) The grantee shall not open or disturb or encumber, at any one (1) time, any more of such public streets than may be reasonably necessary, in the opinion of the director of public works, to enable it to proceed with advantage in laying or repairing its lines. Neither shall the grantee permit any such street, sidewalk or public place so opened, disturbed or encumbered by it in the installation, construction or repair of its lines to remain open or the public way disturbed or encumbered for a longer period of time than shall be reasonably necessary in the opinion of the director of public works, or other proper official of the city. In all cases where any street or public place shall be excavated, disturbed or encumbered by the grantee, the grantee shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to give adequate notice and warning to the public of the existence of all actual conditions present.

(4) Whenever the city shall widen, reconstruct, realign, pave or repave any street or public place, or shall change the grade or line of any street or public place or shall construct or reconstruct any conduit, water main, sewer or water connection, or other municipal works or utility, it shall be the duty of the grantee, when so requested by the city, to change its lines, services and other property in the streets or public places at its own expense so as to conform to the new widening, location alignment or grade of such street or public place and so as not to interfere with the conduits, sewers and other mains as constructed or reconstructed.

Upon written notice by the city of its intended work, above specified, the grantee shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of the city for such construction, reconstruction or improvements. The grantee shall be required to remove antenna television lines, whether above or below the ground elevation, when the street or public ground in which they are located is vacated by formal action of the city council for the convenience of abutting property owners with such removal to be completed not later than sixty (60) days following such action of vacation.

(c) Temporary removal of wire for building moving. The grantee, on the request of any person holding a building moving permit issued by the city, shall temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid the grantee by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(d) Tree trimming. The grantee shall notify the city regarding the need to trim trees upon and overhanging streets of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. At the option of the city, such trimming may be done by the city at the expense of the grantee or by the grantee under the city's supervision and direction at the expense of the grantee. When authorized, trimming shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree.

(e) Removal of the cable system upon termination or cancellation of franchise. At the expiration of the term for which a franchise is granted, or upon its termination and cancellation, as provided for herein, the city shall have the right to require the grantee to remove at its own expense all portions of the cable television system from all streets within the city. The grantee shall promptly, upon being given ten (10) days' notice, proceed to remove from the streets or public places all such property of such system other than any which the director of public works may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the director of public works.

(1) Except when a sale of cable system is pending and the parties are proceeding in good faith, any property of the grantee remaining in place six (6) months after the termination or expiration of the franchise shall be considered permanently abandoned. The director of public works may extend such time if in his judgment circumstances should warrant an extension. Consent to such extension shall not be unreasonably withheld.

(2) Any property of the grantee to be abandoned in place shall be abandoned in such manner as the director of public works shall prescribe.

Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the city, and the grantee shall submit to the director of public works an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-14. Transfers and assignments.

(a) A franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city. Such consent shall not be withheld unreasonably.

No such consent shall be required for a transfer of franchise or the system in trust, mortgage or other hypothecation as a whole or in part to secure an indebtedness.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the city and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the council expressed by resolution. The city shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

(b) The grantee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the qualifications of the prospective controlling party and the grantee shall assist the city in any such inquiry.

(c) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten (10) per cent of the voting interest of the grantee.

(d) The consent or approval of the city council to any transfer of the franchise shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of a franchise.

(e) In any absence of extraordinary circumstances, the city will not approve any transfer or assignment of a franchise prior to substantial completion of construction of proposed system.

(f) The city council reserves the right of "first refusal" to purchase a cable system at or above a bona fide offering price being made by a third party when the system is placed on the market for sale. The city shall exercise such right within ninety (90) days of notification by the grantee of pending sale or such right shall be forfeited.

(g) In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to a franchise agreement. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-15. Subscriber service rates.

(a) Initial rates. The grantee shall establish initial rates for its services in accordance with the rates contained in the grantee's application for a franchise.

(b) Authority to regulate rates. To the extent permitted by federal and commonwealth law, the city may regulate the rates for basic cable service in accordance with the following procedures.

(c) Rates subject to regulation. To the extent permitted in subsection (b) of this section, the city shall have the authority to regulate the following rates, fees and charges:

(1) rates for the provision of basic cable service to subscribers, whether residential or commercial, including multiple tiers of basic cable service;

(2) rates for the initial installation or the rental of one (1) set of the minimum equipment which is necessary for the subscribers' receipt of basic cable service; and

(3) any other rates for services that may become subject to local regulation.

(d) The grantee may petition the council for a change in rates subject to regulation by filing a proposed rate schedule with the clerk of council. Said petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least sixty (60) days prior to the requested implementation date of the rate change. One (1) copy of the petition shall remain on file with the clerk of council and be open for public inspection.

(e) Within sixty (60) days of the filing of the petition for rate change, the council may hold a public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the grantee, shall be heard on any matter including, but not limited to, the performance of the grantee, the grantee's services and the proposed new rates.

(f) Notice of any public hearing shall be published in a newspaper of local general circulation at least once and not less than seven (7) days before the public hearing.

(g) Within thirty (30) days after said hearing, the council shall render a written decision on the grantee's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis of its decision. The council may consider, inter alia, the following factors in approving or disapproving the petition:

- (1) The ability of the grantee to render all system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
- (2) the revenues and profits derived from all system services;
- (3) the efficiency of the grantee;
- (4) the quality of the service offered by the grantee;
- (5) the original cost of the system less depreciation;
- (6) a fair rate of return with respect to the cost of borrowing and the rates of return on investments having similar risks to that of cable TV;
- (7) the extent to which the grantee has adhered to the terms of this chapter and the franchise agreement.

The council shall not consider any valuation based upon a franchise or the grantee's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

Any reasonable expenses incurred by the city in the rate review process will be paid by the grantee.

(h) If no final decision on the grantee's petition has been rendered by the council within one hundred twenty (120) days after filing of the grantee's petition, the grantee's petition will be deemed approved, unless the one hundred twenty (120) day period is extended by mutual agreement of the grantee and the city.

(i) The grantee's petition for a rate increase shall include, but not be limited to, the following financial reports which shall reflect the operations in the City of Lynchburg for the previous three (3) years:

- (1) Balance sheet;
- (2) Income statement;
- (3) Cash flow statement;
- (4) Statement of sources and applications of funds;
- (5) Detailed supporting schedules of expenses, income, assets and other items as may be required; and
- (6) Statement of current and projected subscribers and penetration.

The grantee's accounting records applicable to this system shall be available for inspection by the city at all reasonable times. The city shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to this particular operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by a certified public accountant. Any proprietary information supplied will remain confidential so long as it is consistent with the Freedom of Information Act or other comparable laws in the Commonwealth of Virginia. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-15.1. Regulation of Basic Cable Service Rates.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the city has chosen to regulate basic cable service rates within the city and adopts the basic customer service standards imposed by the Federal Communications Commission (FCC). The regulation of basic cable service by the city is subject to the following conditions:

(a) In the regulation basic cable service the city, as the franchising authority, and adopt and administer all regulations with respect to basic cable service that are consistent with the rules and regulations adopted by the Federal Communications Commission.

(b) Before the council takes final action on any rate change, public participation will be allowed in the rate regulation proceedings. Interested persons will be permitted to express their views by public hearings, written comments, and any other methods that the council determines will enable public concerns to be heard. (Ord. No. O-94-022, 1-25-94)

Sec. 12.1-16. Payment of franchise fee.

(a) For the reason that the streets to be used by the grantee in the operation of its system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and that the grant to the grantee to the use of said streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the city will incur costs in regulating and administering the franchise, the grantee shall pay to the city a percentage (to be prescribed in the franchise agreement) of the grantee's gross annual revenue [as defined in definition Section 12.1-1(k)] from all sources attributable to the operations of the grantee within the confines of the city.

(b) The franchise fee and any other costs or penalties assessed shall be payable quarterly to the city. The grantee shall file a complete and accurate statement verified by a responsible officer of the grantee of all collected gross revenue within the city during the period for which said quarterly payment is made, and said payment shall be made to the director of finance not later than forty-five (45) days after the expiration of the date for which payment is due.

(c) The city shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the grantee's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the grantee by the city which notice shall include a copy of the audit report. The grantee shall bear all costs for any audit conducted pursuant to this section.

(d) In the event that any franchise payment or recomputed amount, cost or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate equivalent to the then existing prime rate of local banking institutions in Lynchburg, Virginia. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-17. Required services and facilities.

(a) A franchise application or proposal for renewal shall include a description of the grantee's system design and a description of programming and services being offered, including optional premium services, a description of facilities being proposed for local origination programming and facilities being offered to various community institutions. The offer of programming and services contained within a grantee's application shall be deemed a binding offer of such grantee for and to the benefit of the city and the subscribers of the grantee. In the event a program originator ceases to provide a service, or in the event the grantee determines that other programming or cable services may be of greater benefit to subscribers, the grantee may, subject to subsections (b) and (c) of this section, substitute services.

(b) The system, after the incorporation of such substitute services, shall satisfy the warranty made by the grantee to subscribers and potential subscribers in its application for a franchise. The city council, on behalf of system subscribers, shall have the right to review any substitution of service that the grantee has made and may order a change therein if it determines, after due hearing on notice, that the warranty has been violated, and that certain broad categories of video or other information programs that were committed by the grantee in its proposal are not being delivered. Any such order shall be issued only after a public hearing has been scheduled and held; and written notice of such hearing shall have been provided to the grantee and to the public at least thirty (30) days prior to such hearing. Any such order may be enforced by an appropriate action in the courts of Virginia or of the United States. A grantee shall not, in relation to this section, be deemed to have waived any right accorded to a franchised cable television operator arising under the First Amendment to the Constitution of the United States.

(c) Notwithstanding subsections (a) and (b) of this section, a grantee may, in accordance with the Cable Communications Policy Act of 1984, upon thirty (30) days' advance notice to the city, rearrange, replace or remove a particular cable service required by the franchise if:

- (1) such service is no longer available to the grantee; or
- (2) such service is available to the grantee only upon the payment of a royalty required under Section 801(b)(2) of Title 17, United States Code, which the grantee can document:
 - a. is substantially in excess of the amount of such payment required on the date of the grantee's offer to provide such service; and
 - b. has not been specifically compensated for through a rate increase or other adjustment.

Pursuant to Section 625(d) of the Cable Communications Policy Act of 1984, a grantee may take such actions to rearrange a particular service from one (1) service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 18. Indemnification and insurance.

(a) It shall be expressly understood and agreed by and between the city and any grantee that the grantee shall save the city, and its officers and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees sustained by the city on account of any lawsuit, judgement, execution of judgment, claim or demand by other individual, corporation or entity whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the implementation or terms of this chapter, the award of any franchise or the installation, operation or maintenance of a cable system whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter and/or any franchise agreement granted.

(b) The grantee shall maintain and by its acceptance of a franchise specifically agrees that it will maintain throughout the term of the franchise the following insurance, with limits not less than the amount set forth in a franchise agreement:

- (1) workers' compensation insurance as required by commonwealth law;
- (2) comprehensive general and automobile liability insurance, including bodily injury, property damage, personal injury, broadcaster's liability and coverage for copyright infringement.

Insurance shall be written with companies acceptable to the city attorney and with a best rating of not less than A:X. In addition, all liability insurance shall include an endorsement in the following form:

It is hereby understood and agreed that the City of Lynchburg, its officers and employees shall be named as joint and several assured with respect to all claims arising out of the operation and maintenance of cable television services under franchise.

It is further agreed that the following indemnity agreement between the City of Lynchburg and the named insured is covered under this policy. The grantee agrees to indemnify, hold harmless and defend the city, its officers and employees from any and all liability of financial loss arising from any suits, claims, losses or actions including cost of defending such actions which may be brought against the city which result directly or indirectly from the wrongful or negligent action of the grantee's officers, employees, agents or others employed by the grantee while engaged in operations in any way relating to the franchise granted by the city.

It is further agreed that the inclusion of more than one (1) assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to the City of Lynchburg.

In event of cancellation or material change in the above coverage, the company will give forty-five (45) days' written notice of cancellation or material change to the City of Lynchburg. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-19. Letter of credit/surety bond.

(a) Within thirty (30) days after the award or renewal of a franchise, a grantee shall deposit with the city an irrevocable letter of credit in the amount of one hundred thousand dollars (\$100,000.00) issued by a federally insured commercial lending institution. The form and substance of said letter of credit are subject to the approval of the city attorney. The letter of credit shall be used to insure the faithful performance by a grantee of all provisions of this chapter and resulting franchise agreement; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under a franchise and the payment by the grantee of any penalties, liquidated damages, claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system, including cost of removal or abandonment of any property of the grantee.

(b) The letter of credit may be drawn upon by the city by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the city manager certifying that the grantee has failed to comply with this chapter, its franchise or franchise agreement, stating the specific reasons therefor, and stating the basis of the amount being drawn. Examples of a basis for drawing upon the letter of credit include, but are not limited to, the following:

- (1) failure of the grantee to pay to the city any taxes after ten (10) days' written notice of delinquency;
- (2) failure of the grantee to pay to the city after ten (10) days' written notice any amounts due and owing the city by reason of the indemnity provisions of Section 12.1-18 of this chapter;
- (3) failure by the grantee to pay to the city any liquidated damages due and owing to the city pursuant to Section 12.1-31 of this chapter;
- (4) failure by the grantee to pay to the city any amounts due pursuant to Section 12.1-6(b)(7) of this chapter; and
- (5) failure by the grantee to pay upon ten (10) days' written notice any amounts owing as franchise fees pursuant to Section 12.1-16 of this chapter.

(c) A grantee shall agree to structure the letter of credit in such a manner so that if the city at any time draws upon the letter of credit, the amount of available credit shall automatically increase to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the city's draft. The intent of this subsection is to make available to the city at all times a letter of credit in the amount specified in this chapter.

(d) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by a franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.

(e) The grantee shall have the option of providing a surety bond that in the opinion of the city attorney affords the substantive and procedural protection to the city afforded by the above described letter of credit. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 20. Construction bond.

(a) Within thirty (30) days after the award or renewal of a franchise, a grantee shall obtain and maintain at its cost and expense, and file with the clerk of council, a corporate surety bond in a company authorized to do business in the Commonwealth of Virginia, and found acceptable by the city attorney, in an amount established in a franchise agreement to guarantee the timely construction and/or reconstruction and full activation of the CATV system and the safeguarding of damage to private property and restoration of damages incurred with utilities.

The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the city, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the city resulting from the failure of a grantee to satisfactorily complete and fully activate the CATV system throughout the franchise area pursuant to the terms and conditions of this chapter and the franchise agreement.

(b) Any extension to the prescribed construction or reconstruction time limit must be authorized by the council. Such extension shall be authorized only when the council finds that such extension is necessary and appropriate due to causes beyond the control of a grantee.

(c) The construction bond shall be terminated only after the council finds that a grantee has satisfactorily completed initial construction and activation or reconstruction of the CATV system pursuant to the terms and conditions of this chapter and the franchise agreement.

(d) The rights reserved to the city with respect to the construction bond are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the city may have.

(e) The construction bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the city, by registered mail, of written notice of such intent to cancel or not to renew. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 21. Service standards.

(a) A grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.

(b) Upon termination of service to any subscriber, a grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon subscriber's request.

(c) Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(d) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by the grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the city.

(e) A grantee shall continue, through the term of the franchise, to maintain the technical, operational and maintenance standards and quality of service set forth in this chapter and the franchise agreement. Should the city find, by resolution, that a grantee has failed to maintain these standards and quality of service, and should it, by resolution specifically enumerate corrections to be made to come into compliance, a grantee shall make such corrections. Failure to make such corrections within three (3) months of such resolution will constitute a breach of condition for which the remedy of Section 12.1-31 is applicable. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 22. Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a grantee are honored. In the event that a grantee elects to overbuild, rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew a franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of grantee, or in the event a new operator acquires the system, a grantee shall cooperate with the city, the new grantee or operator in maintaining continuity of service to all subscribers.

During such period, the grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) In the event the grantee fails to operate the system for ninety-six (96) consecutive hours without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the city or a permanent operator is selected. If the city is required to fulfill this obligation for a grantee, the grantee shall reimburse the city for all reasonable costs, if any, which may be in excess of revenues from the system received by the city that are the result of the grantee's failure to perform. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 23. Rights reserved to the city.

(a) Nothing contained in this chapter shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of a grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing contained in this chapter shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain.

(b) There is hereby reserved to the city every right and power which is required to be reserved by the provisions of this chapter or by local, state or federal law, and a grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its reasonable exercise of such rights or power heretofore or hereafter enacted or established.

(c) Neither the granting of any franchise under the provisions of this chapter nor any provision of this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

(d) The council may do all things which are necessary and reasonable in the exercise of its jurisdiction under the provisions of this chapter and may determine any question of fact which may arise during the existence of any franchise granted under the provisions of this chapter. The city manager is hereby authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under the provisions of this chapter, either on behalf of the city, the grantee or any subscriber, in the best interests of the public. The foregoing, however, shall not waive, abridge or otherwise limit the grantee's right to otherwise appeal any decision or actions of the city council and/or the city manager. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 24. Complaint procedure.

(a) The city manager or his designee is specified by the city as having primary responsibility for the continuing administration of a franchise and implementation of complaint procedures.

(b) A grantee shall maintain a central office within or in close proximity to the city which shall be open during all regular company business hours, have a publicly-listed telephone with a toll-free number and sufficient lines and be so operated that complaints and requests for repairs, billing or adjustments shall be received on a twenty-four (24) hour basis.

(c) A grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repair is required as a result of damage caused by subscriber. A grantee may charge for service calls to the subscribers' home that are not the result of cable failure.

(d) A grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints; said procedure shall be approved by the city manager or his designee. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system and annually thereafter.

(e) A grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for the periodic and confidential inspection by representatives of the city manager. All service complaint entries shall be retained on file for a period consisting of the most recent year.

(f) When there have been similar complaints made or when there exists other evidence, which, in the judgment of the city manager, casts doubt on the reliability or quality of cable service, the city manager shall have the right and authority to compel a grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the city manager no later than fourteen (14) days after the city manager formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

(g) The city manager may require that tests and analyses be supervised by a professional engineer not on the permanent staff of a grantee. The aforesaid engineer should sign all records of the special tests and forward to the city manager such records with a report interpreting the results of the tests and recommending actions to be taken by a grantee and the city.

(h) The city's right under this section shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the city has reasonable grounds to believe that the complaints or other evidence requires that tests be performed to protect the public against substandard cable service. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 25. Re funds.

(a) Subscribers not satisfied that services have been provided as required by the franchise agreement and this chapter shall be encouraged to notify the system manager. The grantee shall work with the subscriber to resolve the problem within forty-eight (48) hours, and upon written request by a subscriber, the grantee shall credit the subscriber's account on a pro rata basis for loss of service commencing forty-eight (48) hours after notification to the grantee.

(b) A grantee shall at the time of initial subscription to the system and annually thereafter furnish a notice to subscribers of their right to a refund for any loss or interruption of service for forty-eight (48) hours or more. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 26. Avail abil ity of books and rec ords.

A grantee shall fully cooperate in making available at reasonable times, and the city manager or his designee shall have the right to inspect the books, records, maps, plans and other like materials of the grantee applicable to the CATV system, at any time during normal business hours; provided where volume and convenience necessitate, the grantee may require inspection to take place on the grantee's premises. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-27. Other pe ti tions and ap pli ca tions.

Copies of all petitions, applications, communications and reports submitted by a grantee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise shall be provided simultaneously to the city. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-28. Fiscal reports.

The grantee shall file annually with the city manager no later than one hundred twenty (120) days after the end of the grantee's fiscal year a copy of a financial report applicable to the CATV system serving the city, including a detailed income and expense statement applicable to its operations during the preceding twelve (12) month period, a balance sheet and a statement of its properties devoted to CATV system operations, by categories, giving its investment in such properties on the basis of original cost less applicable depreciation. Included in this report shall be the following information, specific to the City of Lynchburg: number of homes passed, number of cable plant miles, number of subscribers for each type of service offered and the gross revenues from all sources attributable to the operations of the grantee from within the city. These reports shall be certified as correct by a certified public accountant and there shall be submitted along with them such other reasonable information as the city manager shall request. Any proprietary information supplied shall remain confidential so long as it is consistent with the Freedom of Information Act or other comparable laws of the Commonwealth of Virginia. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-29. Forfeiture and termination.

(a) In addition to all other rights and powers retained by the city under this chapter or otherwise, the city reserves the right to forfeit and terminate a franchise and all rights and privileges of a grantee in the event of a material breach of its terms and conditions. In interpreting this chapter, material provisions shall include all labeled as such and all others which, under all the facts and circumstances indicated, are a significant provision of the franchise agreement. A material breach by the grantee shall include, but shall not be limited to, the following:

- (1) violation of any material provision of the franchise or any material rule, order, regulation or determination of the city made pursuant to the franchise;
- (2) attempt to evade any material provision of the franchise or practices any fraud or deceit upon the city or its subscribers or customers;
- (3) failure to begin or complete system construction, reconstruction or system extension as provided under the franchise; (4) failure to provide the types of services promised; subject to the recourse that is available under Section 625 of the Cable Communications Policy Act of 1984;
- (5) failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the city; or
- (6) material misrepresentation of fact in the application for or negotiation of the franchise.

(b) The foregoing shall not constitute a material breach if the violation occurs but it is without fault of a grantee or occurs as a result of circumstances beyond its reasonable control. The grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers or employees.

(c) The city manager may make a written demand that a grantee comply with any such provision, rules, order or determination under or pursuant to this chapter and the franchise agreement. If the violation by the grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city manager may place the issue of termination of a franchise before the city council. The city manager shall cause to be served upon the grantee, at least twenty (20) days prior to the date of such a council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the council is to consider.

(d) The city council shall hear and consider the issue and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the grantee has occurred.

(e) If the city council shall determine the violation by a grantee was the fault of the grantee and within its reasonable control, the council may, by resolution, declare that the franchise of the grantee shall be forfeited and terminated unless there is compliance within such reasonable period as the city council may fix.

(f) The issue of forfeiture and termination shall automatically be placed upon the council agenda at the expiration of the time set by it for compliance. The council then may terminate a franchise forthwith upon finding that the grantee has failed to achieve compliance or may further extend the period in its discretion.

(g) Nothing herein shall be construed as a waiver of or limitation on any right of a grantee to seek relief in federal or state court. In the event of any determination by the city to revoke or terminate a franchise, to impose a forfeiture of a bond, letter of credit or other security fund or to impose a substantial financial penalty which would have a material adverse effect upon a grantee, such a determination shall be stayed during the pendency of any judicial review thereof. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 30. Acquisition by city.

If a renewal of a franchise held by a grantee is denied and the city acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

If a franchise held by a grantee is revoked for cause and the city acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price. Under the term "equitable price" such matters as the harm to the community resulting from the grantee's breach of the franchise might be considered in determining the appropriate price.

The value of a cable system (fair market value or equitable price) shall be determined by an appraisal committee consisting of three (3) persons to be appointed by the circuit court of the city. The grantee, or its successors or assigns, and the city shall each recommend to the court one (1) appointee; however, the court shall not be bound by such recommendations. No payment shall be made by the city to the grantee by reason of the value of the franchise itself.

It shall be understood that a condition of each contract entered into by the grantee with reference to operations under a franchise shall be that each contract shall be subject to the exercise of this authority by the city and that the city may be substituted for the grantee as a party to any such contract and may succeed, at its direction, to all the privileges and the obligations thereof at its option.

Upon the termination of a franchise and the rights granted thereunder, whether by expiration or forfeiture, the city council may direct and require the grantee as provided in Section 12.1-13(e) to remove its wires, cables, fixtures and accessories and appurtenances from the streets. To this accomplishment, if directed, the city shall make a claim on the letter of credit or surety bond as prescribed in a franchise. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 31. Liquidated damages.

By acceptance of the franchise granted by the city, a grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the franchise agreement will result in damage to the city, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the franchise agreement shall include provisions for liquidated damages to be paid by the grantee, in amounts set forth in the franchise agreement and chargeable to the letter of credit for the following concerns:

(a) For failure to complete system construction or reconstruction in accordance with Sections 12.1-9, 12.1-10, 12.1-11 and 12.1-12 unless the council specifically approves the delay by motion or resolution due

to the occurrence of conditions beyond the grantee's control, a grantee shall pay to the city five hundred dollars (\$500.00) per day for each day, or part thereof, that the deficiency continues.

(b) For failure to provide, upon written request, data, documents, reports or information or to cooperate with the city during an application process or CATV system review, a grantee shall pay to the city fifty dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues.

(c) For failure to test, analyze and report on the performance of the system following a written request pursuant to this ordinance, a grantee shall pay to the city one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues.

(d) For failure to provide in a continuing manner the types of services proposed in the accepted application, unless the council specifically approves grantee a delay or change, or the grantee has obtained modification of its obligation under Section 625 of the Cable Communications Policy Act of 1984; the grantee shall pay to the city five hundred dollars (\$500.00) per day for each day, or part thereof, that each noncompliance continues.

(e) Upon determining that there has been a failure to make improvements in accordance with Section 12.1-21(e), the grantee shall pay to the city five hundred dollars (\$500.00) per day for each day, or part thereof, that such noncompliance continues.

(f) Any other action or nonaction by the grantee, as agreed upon between the city and the grantee, and set forth in the franchise agreement. Nothing in this section shall preclude further liquidated damages as agreed upon by the parties in the franchise agreement.

(g) If the city manager concludes that a grantee is liable for liquidated damages pursuant to Section 12.1-31, he shall issue to the grantee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the basis for the assessment, and shall inform the grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the city council and the city council rules:

- (1) that the violation has been corrected, or
- (2) that an extension of time or other relief should be granted.

A grantee desiring a hearing before the city council shall send a written notice of appeal by certified mail to the city manager within ten (10) days of the date on which the city sent the notice of intention to assess liquidated damages. The hearing on the grantee's appeal shall be within thirty (30) days of the date on which the city sent the notice of intention to assess liquidated damages. After the hearing, if the city council sustains in whole or in part the city manager's assessment of liquidated damages, the city manager may at any time thereafter draw upon the letter of credit required by Section 12.1-19. Unless the city council indicates to the contrary said liquidated damages shall be assessed beginning with the date on which the city sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases as determined by the city manager.

(h) Nothing herein shall be construed as a waiver of or limitation on any right of a grantee to seek relief in federal or state court. In the event of any determination by the city to revoke or terminate a franchise, to impose a forfeiture of a bond, letter of credit or other security fund or to impose a substantial financial penalty which would have a material adverse effect upon a grantee, such a determination shall be stayed during the pendency of any judicial review thereof. (Ord. No. O-88-052, § 1, 3-8-88)

Sec. 12.1- 32. Rights of individuals.

(a) A grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, sex, age or disability. A grantee shall comply at all times with all other applicable federal, state and local laws and regulations relating to nondiscrimination.

(b) A grantee shall strictly adhere to applicable equal employment opportunity requirements of federal, state and local regulations and as amended from time to time. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-33. Performance evaluation sessions.

(a) The city and a grantee shall hold scheduled performance evaluation sessions within thirty (30) days of the third (3rd), sixth (6th), ninth (9th) and twelfth (12th) anniversary dates of a grantee's award of the franchise and as may be required by federal and state law.

(b) Special evaluation sessions may be held at any time during the term of a franchise at the request of the city or the grantee.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies and grantee or city rules. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-34. New developments.

(a) Subsequent to each performance evaluation session, as set forth in Section 12.1-33, the city council shall have the authority to order a public hearing on the provision of additional channel capacity by the grantee or on the inclusion in the grantee's CATV system of state-of-the-art technology or upgraded facilities. Notice of such hearing shall be provided to the grantee and the public not later than thirty (30) days prior to such hearing.

(b) If after such hearing, the city council determines that:

(1) there exists a reasonable need and demand for additional channel capacity and/or state of the art technology or upgraded facilities, and

(2) provision has been made or can be made for reasonable rates which will allow the grantee a fair rate of return on its investment (including the investment required to provide the additional channels and/or the state-of-the-art technology or upgraded facilities), taking into account the potential adverse impact of a rate increase on the grantee's existing and potential subscriber base, and

(3) will not result in economic waste for the grantee, the city council may order the grantee to provide a specified number of additional channels and/or specified state-of-the-art technology or upgraded facilities. In considering the economic feasibility of required system improvements the city council may consider the extension of the term of the franchise to permit the recovery of the cost of said improvements. Any proposed extension of the franchise shall be treated procedurally in accordance with the procedure for franchise renewal as set forth in Section 12.1-6b(6). Without implying any limitations as to other provisions of this chapter, this section is deemed a material provision within the meaning of Section 12.1-29 of this chapter. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-35. Access channels.

(a) Each cable system franchised by the city shall provide at least one (1) governmental access channel dedicated to the City of Lynchburg; one (1) educational access channel dedicated to the public school system in Lynchburg; and one (1) public access channel to be utilized by the public in accordance with rules and regulations established by the city council.

(b) If any governmental or educational access channel is being utilized more than ten (10) hours per day, five (5) days a week between the hours of 6:00 a.m. and 11:00 p.m. for twelve (12) consecutive weeks; or if

any public access channel is being used eighty (80) per cent of the time between 4:00 p.m. and 11:00 p.m. for twelve (12) consecutive weeks, the grantee shall, upon receipt of written notice from the city make new channel(s) available for the same purpose(s); provided, however, that nothing in this paragraph shall require the grantee to construct additional channel capacity to the cable system for the sole purpose of providing additional access channel capacity. Such requirement may be met by making available, on a part-time basis, one (1) or more other underutilized channels, or on a full- or part-time basis one (1) or more other unused access channels until such time as such underutilized or unused channels are needed for the uses to which they have been dedicated.

(c) Whenever any access channel, other than the basic access channels, required in subsection (a) of this section for governmental, educational and public access, is utilized less than four (4) hours per day for five (5) days per week for a continuous period of not less than twelve (12) consecutive weeks, the city may permit different or additional "interim" uses for said channel. The grantee may be permitted to utilize unused access channel capacity under rules and procedures established by the city; however, no access capacity shall be utilized by the grantee until all other channel capacity on the cable system has been programmed. (d) Access channels permitted by the city for "interim" use by a cable operator are to be restored to governmental, educational or public access use whenever the criteria in paragraph (b) of this section are exceeded for any one (1) of the existing access channel uses or whenever the demand for use as demonstrated by records of each access channel indicate that an excessive number of people or programs are being turned away by lack of channel capacity available. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 36. Privacy.

(a) In accordance with Section 631(a)(1) of the Cable Communications Policy Act of 1984:

"At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a Grantee shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of —

"(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; "

"(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

"(C) the period during which such information will be maintained by the Grantee;

"(D) the times and place at which the subscriber may have access to such information;

"(E) the limitations provided by this section with respect to the collection and disclosure of information by a Grantee and the right of the subscriber to enforce such limitations."

(b) Each grantee shall strictly observe and protect the right of privacy and of property of subscribers and users at all times. Information on individual subscribers, individual subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any person, mailing service, investigating agency or department, company, other agency or entity, unless upon the authority of a court of law or upon prior written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such authorization shall not in any event be required as a condition of receiving service.

(c) A grantee may release the number of its subscribers but only as a total number and as a percentage of the potential subscribers throughout the city. When indicating the number of subscribers viewing a particular channel at a particular time, the grantee shall indicate only the total number of subscribers viewing during the relevant time and the percentage of all subscribers which they represent, but never the identity of a particular subscriber.

(d) A grantee may maintain such information as is necessary to bill subscribers for the purchase of any system service. A grantee may contract for billing services, provided that such contractor agrees to be bound by the provisions of this section and the penalties thereto pertaining.

(e) A subscriber may at any time revoke any authorization previously made by delivering to the grantee in writing by mail or otherwise his/her decision to so revoke. Any such revocation shall be effective upon receipt by franchisee.

(f) No monitoring of any subscriber terminal shall take place without specific prior valid written authorization by the user of the terminal in question; provided, however, the grantee may conduct systemwide or individually addressed "sweeps" for the purpose of verifying system integrity. The grantee shall not initiate a two-way subscriber activated response mechanism without a finding by the city manager that the system can operate effectively and yet give adequate protection against any invasion of subscriber privacy.

(g) A grantee shall not tabulate any test results, nor permit the use of the system for such tabulation, which would reveal the commercial product preferences or opinions of individual subscribers, member of their families or their invitees, licensees or employees without prior valid written authorization of the subscriber.

(h) Each compilation, publication, tabulation or other dissemination of each piece of information made or permitted to be made in violation of this section shall be considered a separate violation. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 37. Ac ce p tance and ef fec tive date of fran chise.

(a) No franchise granted pursuant to the provisions of this chapter shall be effective until executed by an authorized representative of the franchisee. In the event any of the things required in this section are not done and completed in the time and manner required, the council may declare the franchise null and void.

(b) A grantee shall file with the clerk of council its written acceptance of the franchise agreement together with the certification of insurance, letter of credit and construction bond required by Sections 12.1-18, 12.1-19 and 12.1-20, respectively, and its agreement to be bound by and to comply with and to do all things required of him by the provisions of this chapter. Such acceptance and agreement shall be acknowledged by the grantee before a notary public and shall in form and content be satisfactory to and approved by the city attorney. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 38. Vio la tions.

(a) From and after the effective date of this chapter, it shall be unlawful for any person to establish, operate or to carry on the business of operating a cable television system unless a franchise therefor has first been obtained pursuant to the provisions of this chapter.

(b) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised CATV system within this City for the purpose of enabling himself or others to receive any cable television service, without payment to the owner of said system.

(c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of cable television services.

(d) Any person violating any part of Section 12.1-38 shall be liable, upon conviction thereof, to a penalty of not more than five hundred dollars (\$500.00). Each day any such violation continues shall constitute a separate offense. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-39. Service to multiple unit dwellings.

(a) No owner of any multiple unit residential dwelling under common ownership control or management, or a planned unit development, or the agent or representative of either, shall unreasonably interfere with the right of any tenant or lawful resident thereof to receive cable service, cable installation or maintenance from a grantee, provided that such owner has received nominal just compensation resulting from any "taking" of property arising out of this chapter for which just compensation is due under the Constitution of the United States and the Commonwealth of Virginia.

(b) No owner of any multiple unit residential dwelling or planned unit development or the agent or representative of either shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable services from a grantee.

(c) No person shall resell, without the expressed, written consent of a grantee, any cable service, program or signal transmitted by a grantee.

(d) Nothing in this chapter shall prohibit a person from requiring that cable system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.

(e) Nothing in this chapter shall prohibit a person from requiring a grantee to agree to indemnify the owner or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable facilities. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-40. Incorporation of proposal by reference.

(a) Upon award of a franchise pursuant to this chapter, a grantee shall agree to be bound by all the terms and conditions contained herein.

(b) A grantee shall also agree to provide all services specifically set forth in its proposal (or as modified by a franchise agreement) and to provide cable television service within the confines of the City of Lynchburg and by its acceptance of the franchise, the grantee specifically grants and agrees that its proposal is thereby incorporated by reference and made a part of the franchise agreement. In the event of a conflict between such proposal and the provisions of this chapter and the franchise agreement, the provisions of this chapter shall prevail. Failure to provide services as promised in the grantee's application shall be deemed a breach of this chapter to which the provisions of Sections 12.1-29 and 12.1-31 of this chapter shall apply. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-41. Time is of the essence.

Whenever a franchise or contract shall set forth any time for an act to be performed by or on behalf of the grantee, such time shall be deemed of the essence and any failure of the grantee to perform within time allotted shall always be sufficient grounds for the city to invoke liquidated damages or revocation of a franchise. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-42. Failure of city to enforce a franchise, no waiver of the terms thereof.

Subject to the provisions of Section 626(d) of the Cable Communications Policy Act of 1984 and Section 12.1-6(b)(4) of this chapter, a grantee shall not be excused from complying with any of the terms and conditions of a franchise or this chapter by any failure of the city upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-43. Waivers.

(a) Any provision of this chapter may be waived at the sole discretion of the City of Lynchburg by resolution of the city council.

(b) The grantee may submit a request for waiver to the city council at any time during the franchise term. Such request for waiver may, at the sole discretion of the city council, be set for public hearing and a decision shall be made within one hundred twenty (120) days following the submission. Procedures for modification of franchise obligations shall be in compliance with Section 625 of the Cable Communications Policy Act of 1984.

(c) The city council may authorize the economic, technical or legal evaluation of such waiver request and the grantee shall be required to reimburse the city for any expenditures incurred by the city in connection with such evaluation.

(d) This section is enacted solely for the convenience and benefit of the grantor and shall not be construed in such a manner as to create any right or entitlement for the grantee. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1-44. Community cable advisory committee.

(a) The city council may appoint a community cable advisory committee to advise the city council on matters pertaining to the promotion and use of the public access facilities.

(b) Public access is defined as channel capacity facilities and usage granted by a cable company to the public, free of charge, for the first five (5) minutes of usage, after which time users may be required to pay a fee to cover the cost of using the production facilities. Public access programming is to be free of advertising and is not to be commercial in nature. Local sponsorship and financing is permissible but must be clearly identified on all programs.

(c) The committee, whose actions are appealable to the city council, shall meet at least four (4) times yearly and shall include representation including, but not limited to, the following groups and institutions: public schools, Lynchburg city government, Lynchburg ministerial association and one (1) representative from each cable company serving the city.

(d) The functions, duties and responsibilities of the community cable advisory committee include:

(1) the committee shall develop for council consideration and approval rules and regulations governing the use of the public access channel(s), the studio equipment and staff support provided by local cable companies;

(2) the committee shall monitor the public access operations to ensure that council-adopted rules and regulations are complied with by the cable companies and the individuals and groups utilizing the public access channel(s);

(3) the committee shall identify, support, encourage and educate community residents, nonprofit organizations and institutions in producing and disseminating noncommercial public access programming;

(4) the committee shall continually identify, monitor and encourage various community agencies and groups which are potential users of two-way amplification resources (partial or system-wide activation);

(5) the committee shall monitor each cable company's efforts in relation to its performance requirements for providing local origination programming (local origination programming is defined as company locally produced programming involving community activities not including access programming);

(6) the committee shall assist individuals, community agencies and groups in locating local and nonlocal sources of funding for community based (access) programming;

(7) the committee shall alert the cable company concerning needs and programs associated with its studios, facilities and equipment;

(8) the committee shall serve as an appeal authority for all problems arising that relate to public access and two-way amplification and shall attempt to resolve all such problems. The committee can make

recommendations to council if further action is needed and unresolved problems are appealable to council; and

(9) the committee shall advise city council through a written report each year as to the activities for the year, amount of public access programming produced, needs and utilization of two-way amplification and any problems that may need city assistance in resolving. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 45. Force majeure.

With respect to any provision of this chapter or any franchise agreement granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon a grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest or similar events, the occurrence of which was not reasonably foreseeable by the grantee and is beyond its reasonable control. (Ord. No. O-88-053, § 1, 3-8-88)

Sec. 12.1- 46. Severability.

If any section or provisions of this chapter is held by a court of competent jurisdiction to be invalid or unconstitutional, it shall not affect the validity of the balance of this chapter. (Ord. No. O-88-053, § 1, 3-8-88)

